

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 10 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0172-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JERROD LEN BOOTH,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008169067001DT

Honorable Steven K. Holding, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Catherine Leisch

Phoenix
Attorneys for Respondent

Jerrold Booth

Phoenix
In Propria Persona

BRAMMER, Judge.

¶1 Petitioner Jerrod Len Booth seeks review of the trial court’s summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but deny relief.

¶2 After a jury trial, Booth was convicted of resisting arrest and sentenced to an enhanced, presumptive prison term of 3.75 years. His conviction and sentence were affirmed on appeal. *See State v. Booth*, No. 1 CA-CR 09-0356 (memorandum decision filed July 20, 2010).

¶3 In September 2010, Booth filed a timely, pro se notice of post-conviction relief. Appointed counsel notified the trial court that he had reviewed the record and found nothing to warrant grounds for reversal pursuant to Rule 32, and, consistent with *Lammie v. Barker*, 185 Ariz. 263, 264, 915 P.2d 662, 663 (1996), the court afforded Booth an opportunity to file a pro per petition.

¶4 In his pro per petition for post-conviction relief, Booth argued his conviction should be reversed because it was based on an illegal arrest and unconstitutional seizure by the police. In its response, the state argued Booth’s claim was both precluded and without merit. The trial court summarily dismissed Booth’s petition, finding he had “failed to show a colorable claim for relief.”

¶5 In his petition for review, Booth urges this court to overturn his conviction based on the alleged constitutional violation he raised below. *See Ariz. R. Crim. P. 32.1(a)* (grounds for relief include “conviction or the sentence was in violation of the Constitution of the United States”). We review a trial court’s summary dismissal of a

petition for post-conviction relief for an abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶6 Rule 32.6 requires a trial court to “identify all claims that are procedurally precluded” under Rule 32 and to dismiss the petition if, “after identifying all precluded claims, [it] determines that no remaining claim presents a material issue of fact or law which would entitle the defendant to relief . . . and that no purpose would be served by any further proceedings.” In this case, we need not consider whether the court abused its discretion in finding Booth’s claim was not colorable; his petition was subject to dismissal under Rule 32.6 because his claim clearly was precluded. *See Ariz. R. Crim. P. 32.2(a)(3)* (precluding Rule 32.1(a) claim “waived at trial, on appeal, or in any previous collateral proceeding”); *Ariz. R. Crim. P. 32.2(c)* (“[A]ny court on review of the record may determine and hold that an issue is precluded . . .”). The claim Booth asserts for post-conviction relief is one that could have been raised on direct appeal, but was not. *See Booth*, No. 1 CA-CR 09-0356, ¶¶ 1, 4.¹

¶7 The trial court did not abuse its discretion in summarily dismissing Booth’s petition for post-conviction relief because the only claim he raised was precluded

¹In his reply on his petition for post-conviction relief, Booth asserted his claim should not be precluded because he had asked appellate counsel to raise it on appeal, but she had refused. But Rule 32.2(b) does not recognize such an exception to preclusion, and Booth did not raise a claim of ineffective assistance of appellate counsel below. *Cf. State v. Lopez*, 223 Ariz. 238, ¶ 7, 221 P.3d 1052, 1054 (App. 2009) (trial court need not consider claims of ineffective assistance of counsel first raised in petitioner’s reply).

pursuant to Rule 32.2(a)(3). *See* Ariz. R. Crim. P. 32.6(c). Accordingly, we grant review but deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge